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1 FRED J. KNEZ, ESQ. SBN 94038
2 LAW OFFICES OF FRED J. KNEZ
3 18493 Halter Ln
4 Post Office Box 70090
5 Riverside, CA 92513

ORIGINAL

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

FEB 16 2006

4 Telephone: (951) 789-1832
5 Facsimile: (951) 780-1480

6 Attorney for Defendants, MATTHEW GREY,
7 RICK GAY and KASIA GAY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF RIVERSIDE

11 TEDD W. MASON,)
12)
13 Plaintiffs,)
14 vs.)
15 MATTHEW GREY, RICK GAY, KASIA GAY,)
16 RIVERSIDE UNIFIED SCHOOL DISTRICT,)
17 and DOES 1 through 25)
18 Defendants.)

CASE NO: RIC 443002

Assigned for all purposes to:
Hon. Edward D. Webster, Dpt 5

**ANSWER OF DEFENDANT RICK GAY
TO UNVERIFIED COMPLAINT OF
TEDD W. MASON**

**Complaint Filed: 1-10-06
Trial Date: None**

18 COMES NOW, Defendant RICK GAY and, for himself and no other Defendant, responds to
19 the unverified Complaint of TEDD W. MASON, as follows:

20 Pursuant to Code of Civil Procedure § 431.30, this answering Defendant denies, generally and
21 specifically, each and every allegation contained in Plaintiff's unverified Complaint, and the whole
22 thereof, and further denies that as a proximate result of any conduct on the part of this answering
23 Defendant, Plaintiff has been injured or damaged in the sum or sums alleged, or at all.

24 **AFFIRMATIVE DEFENSES**

25 **FIRST AFFIRMATIVE DEFENSE**

26 *(Failure to State Claim Upon Which Relief Can Be Granted)*

27 1. As a First Affirmative Defense, this answering Defendant asserts that Plaintiff's

1 allegations within the unverified Complaint fail to state a claim upon which relief can be granted and
2 fails to state facts sufficient to state a cause of action against this answering Defendant.

3 **SECOND AFFIRMATIVE DEFENSE**

4 *(Estoppel)*

5 2. As a Second Affirmative Defense, this answering Defendant is informed and believes
6 and based thereon alleges that Plaintiff engaged in conduct and activities with respect to the subject of
7 this litigation, and incidents which are the subject of Plaintiff's unverified Complaint, and by reason of
8 said activities and conduct Plaintiff is estopped from asserting any claims for damages or seeking any
9 other relief against this answering Defendant.

10 **THIRD AFFIRMATIVE DEFENSE**

11 *(Unclean Hands)*

12 3. As a Third Affirmative Defense, this answering Defendant asserts that Plaintiff himself
13 acted improperly in connection with the events alleged in his unverified Complaint and, as such, is not
14 entitled to recover any damages or damages as alleged in the Complaint.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 *(Failure to Mitigate)*

17 4. As a Fourth Affirmative Defense, this answering Defendant alleges that Plaintiff,
18 though under a duty to do so, has failed and neglected to mitigate his alleged damages, and, therefore,
19 cannot recover against this answering Defendant whether as alleged or otherwise.

20 **FIFTH AFFIRMATIVE DEFENSE**

21 *(Intervening Cause)*

22 5. As a Fifth Affirmative Defense, this answering Defendant is informed and believes, and
23 based thereon alleges that if Plaintiff has suffered or sustained any damage or injury, either as alleged
24 in his unverified Complaint or at all, the damage or injury was directly or proximately attributable to
25 the negligence, fault or acts of other parties or entities, whether or not parties to this action, and
26 damages to Plaintiff, if any, should be reduced in proportion to the amount of negligence and/or fault
27 attributable to such other persons or entities, whether or not parties to this action.

1 this answering Defendant.

2 **TENTH AFFIRMATIVE DEFENSE**

3 *(Contributory Negligence)*

4 10. As a Tenth Affirmative Defense, this answering Defendant is informed and believes and
5 on that basis alleges that at all times mentioned herein, Plaintiff was negligent, careless, reckless, and
6 unlawfully conducted himself so as to directly or proximately contribute to the happening of the
7 incident and the occurrence of the alleged damages, if any, all of which said negligence bars either
8 completely or partially the recovery sought by Plaintiff herein.

9 **ELEVENTH AFFIRMATIVE DEFENSE**

10 *(Apportionment of Fault)*

11 11. As an Eleventh Affirmative Defense, this answering Defendant is informed and believes
12 and on that basis alleges that this answering Defendant is not legally responsible in any manner with
13 respect to the damages and injuries claimed by Plaintiff in his unverified Complaint. However, if this
14 answering Defendant is found to be legally responsible, then this answering Defendant provisionally
15 alleges that his legal responsibility is not the sole and proximate cause of the injuries alleged by
16 Plaintiff, and that the damages awarded to Plaintiff, if any, are to be apportioned according to the
17 respective fault and legal responsibility of all parties, persons, and entities, or the agents, servants, and
18 employees who contributed to and/or caused said injury, according to proof at trial.

19 **TWELFTH AFFIRMATIVE DEFENSE**

20 *(No Entitlement to Attorney Fees)*

21 12. As a Twelfth Affirmative Defense, this answering Defendant is informed and believes
22 and on that basis alleges that the Prayer in the unverified Complaint of Plaintiff for attorney fees is not
23 supported by any contract or statute which would authorize the recovery of attorney fees against this
24 answering Defendant and Plaintiff's unverified Complaint fails to allege any facts which would entitle
25 Plaintiff to recover attorney fees should Plaintiff prevail in this case.

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27 ///

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 *(Reservation of Right to Amend)*

3 13. As a Thirteenth Affirmative Defense, this answering Defendant personally has
4 insufficient knowledge and/or information upon which to form a belief as to whether there may be
5 additional, as yet unstated Affirmative Defenses available. Therefore, this answering Defendant
6 reserves the right to assert additional defenses in the event that discovery indicates that such additional
7 defenses would be appropriate.

8 **WHEREFORE**, this answering Defendant prays for judgment as follows:

- 9 1. Plaintiff take nothing by reason of Plaintiff's unverified Complaint;
10 2. This answering Defendant be awarded costs of suit incurred herein; and,
11 3. For such other and further relief as the Court deems just and proper.

12 DATED: February 16, 2006

Respectfully submitted,

13
14 BY: 

FRED J. KNEZ

Attorney for Defendant, RICK GAY

